

**BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY**

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An Appeal by

**Queen Anne’s Conservation Association, Inc., et al.**

from a decision of the Queen Anne’s County Planning Commission approving final subdivision and site plans for Phase II of Four Seasons at Kent Island

Case No. BOA-19-12-0053

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**OPINION AND ORDER**

**I. Introduction**

The matter before the Board of Appeals of Queen Anne’s County (“Board”) in this case is an appeal filed by the Queen Anne’s Conservation Association, Inc., Robert Foley, Brian Foley, James and Karen Wimsatt, Hal Fischer, Molly MacGlashan-Fischer, and Andrea Prieto (collectively the “Opponents”). The Opponents challenge a decision of the Queen Anne’s County Planning Commission (“Planning Commission”) approving final subdivision and site plans for Phase II of a residential development known as Four Seasons at Kent Island (“Four Seasons”).

On February 26, 2020, beginning at 4:00 p.m., the Board conducted a public hearing on the Opponents’ appeal in the main meeting room adjunct to the Board’s offices at 110 Vincit Street, Centreville, Maryland. At the beginning of the hearing, the Board established all requirements were met governing (1) the filing of the appeal, and (2) notice of the February 26 hearing. Board members hearing the case were Mr. Howard A. Dean, Acting Chairman, Mr. Craig W. McGinnes, Member, and Mr. Michael A. Lesniowski, Alternate Member.

**II. Requested Relief and Scope of Review**

On November 14, 2019, the Planning Commission adopted the following resolution:

RESOLVED, that the Planning Commission, regarding the request by K. Hovnanian’s Four Seasons at Kent Island II, LLC., for Final Major Subdivision approval for the creation of 179 single-family lots and associated open space lots, Final Major Site Plan

approval for 70 condominium units in 5 multifamily buildings, and Final Major Site Plan approval for a 26,533 square foot clubhouse building, all as part of Phase II of the proposed 1,079 dwelling unit age restricted community on 338.851 acres of land (Parcel 7) west and north of Castle Marina Road, in Chester, and as more particularly described in Department of Planning & Zoning file #SP-18-09-0014-C, shall be and is hereby granted with the following conditions: (1) all legal documents including off site easements must be approved and recorded, (2) all required sureties, review and inspection fees must be submitted to the Department of Public Works and the Department of Planning & Zoning as appropriate, (3) any outstanding minor engineering edits be made to the Plan as directed by the Department of Public Works, (4) all required signatures must be obtained, and (5) to consult with the Department of Public Works to assess the functionality of the stormwater management system as shown regarding the anticipated sea level rise and storm surge and report back to the Planning Director.

In the appeal the Opponents filed on December 13, 2019, the Opponents ask the Board to reverse the Planning Commission's decision. Focusing on issues related to stormwater management, the Opponents contend the Board must deny the final subdivision and site plan applications that K. Hovnanian at Four Seasons, LLC ("Hovnanian") submitted to the County for Phase II of Four Seasons. The Opponents raise the following issues:

- (1) the Four Seasons' [*sic*] Stormwater Management Plan (SMP), as approved, fails to meet both State and County requirements for stormwater management,
- (2) the SMP, as approved, will substantially increase stormwater drainage or pollution, and
- (3) the SMP, as approved, will have adverse impacts to the health, safety and welfare of the public and the environment of Queen Anne's Co.

The Board conducted a *de novo* hearing on the three issues the Opponents raised. But because the stormwater-related issues were the only issues the Opponents raised in their notice of appeal, the Board did not consider other aspects of Hovnanian's Phase II final subdivision and site plan applications.<sup>1</sup> The Board presumed the Planning Commission's decision was correct

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<sup>1</sup>See *Grasslands Plantation, Inc. v. Frizz-King Enterprises*, 410 Md. 191, 216 (2009) (holding that the Board's *de novo* hearing is "an entirely new hearing in which *all specified issues* on appeal should be heard anew as if no decision has been previously rendered") (*italics added*); see also *Halle Cos. v. Crofton Civic Ass'n*, 339 Md. 131, 142 (1995) (describing *de novo* proceedings as "wholly original *with regard to all issues properly raised.*") (*italics added*).

regarding all other aspects of Hovnanian's Phase II final subdivision and site plan applications. The parties offered no evidence during the February 26 hearing to contest this presumption. Concerning the three stormwater-related issues the Opponents raised, the Board placed the burden of proof on Hovnanian to establish compliance with subdivision and site plan requirements applicable to stormwater management.

### **III. Parties**

Before the Board, Mr. Jesse B. Hammock, Esq., of Parker Goodman Gordon & Hammock, LLC in Easton, Maryland, represented the Opponents. The Opponents are the appellants in this case.

Mr. Joseph A. Stevens, Esq., of Stevens Palmer, LLC in Centreville, Maryland, represented Hovnanian. Hovnanian is the subdivision and site plan applicant, as well as the landowner.

Mr. Christopher F. Drummond, Esq., of Centreville, Maryland, represented the Planning Commission.

### **IV. Jurisdiction**

Six days prior to the public hearing, Hovnanian filed a written motion to dismiss the Opponents' challenges to Phase II's stormwater management plan ("SMP") and to exclude all testimony related to sea level rise. Hovnanian argued in favor of its motion at the beginning of the February 26 public hearing and the Opponents argued against the motion.<sup>2</sup> After considering the parties' arguments, the Board denied the motion. The Board will now explain its decision.

In its motion, Hovnanian argues County law provides that an SMP is submitted to and approved by the County's Department of Public Works ("DPW"). Hovnanian further argues that under the law applicable to Four Seasons, any appeal of DPW's decision to approve an SMP must be filed with the County Commissioners within 30 days of DPW's decision. Hovnanian points

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<sup>2</sup>Mr. Drummond indicated his clients supported Hovnanian's motion.

out DPW approved the Phase II SMP on November 22, 2019 and the Opponents did not appeal that approval to the County Commissioners. According to Hovnanian, the lack of an appeal means the Board must presume the SMP to be valid and the Opponents cannot raise issues involving the SMP in an appeal of the Phase II subdivision and site plans. Because the only issues the Opponents raise are issues involving the SMP, Hovnanian asserts the Board must dismiss the Opponents' appeal.

Regarding sea level rise, Hovnanian argues the Board does not have authority to deny the Phase II plans based on predictions about sea level rise and evidence, if any, that the Phase II storm water management system might be negatively affected by sea level rise. Hovnanian contends the Board lacks authority to consider matters related to sea level rise because County land use regulations applicable to Phase II do not contain any standards pertaining to sea level rise. If the Board were to entertain evidence about sea level rise and then deny the Phase II plans based on such evidence, Hovnanian argues such a decision would violate the Development Rights and Responsibilities Agreement that Hovnanian and the County entered into on September 17, 2002 (the "2002 DRRA"),<sup>3</sup> as well as violate Hovnanian's right to due process. Thus, Hovnanian insists the Board should exclude evidence related to sea level rise.

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<sup>3</sup>Under the 2002 DRRA, Hovnanian committed to providing the County with cash payments, public improvements, and land dedications that exceed adequate public facility requirements and other public benefits County law ordinarily requires of new development. In return, the County agreed Hovnanian could develop Four Seasons in accordance with the County's land use laws then in effect, thus immunizing the project from subsequent changes in the law.

Although the Board has received the 2002 DRRA into evidence in two prior Four Seasons appeals, the 2002 DRRA is not an evidentiary exhibit in this appeal. No party to this appeal, however, disputed the applicability of the 2002 DRRA to Four Seasons Phase II. Hovnanian's motion to dismiss, which is part of the Board's procedural record in this appeal, includes portions of the 2002 DRRA as an exhibit to its motion. In addition, the 2002 DRRA is a public document recorded in the Queen Anne's County land records in liber 960, beginning at folio 84, and the Board routinely takes notice of documents recorded in the land records if parties do not dispute the authenticity of a particular document. In this appeal, therefore, the Board will take the 2002 DRRA into account when necessary.

### **A. Applicable County Law**

As Hovnanian notes in its motion, the 2002 DRRA “froze” in place then-existing County laws, rules, regulations, and policies governing the use, density or intensity of the Four Seasons project, including (but not limited to) laws governing development, subdivision, stormwater management, environmental protection, land planning and design, and adequate public facilities. *See* 2002 DRRA § 12.1(a). The laws then in place are the laws that were in force on the effective date of the 2002 DRRA, which is September 17, 2002. *See Id.* at p. 1.

Regulations addressing zoning and subdivision are found in Title 18, Subtitle 1 of the County code that was in effect on September 17, 2002 (the “Former Code”). Regulations addressing stormwater management are found in Title 14, Subtitle 4 of the Former Code. In discussing the Board’s authority to hear the present appeal, the Board will cite to relevant provisions of the Former Code.

The Board also will cite to provisions of the Annotated Code of Maryland (“Maryland Code” or “Md. Code”). The Former Code, as well as the present County Code, refer to incorporated Maryland Code provisions as being found in Article 66B of the Maryland Code. The State, however, recodified Article 66B as the Land Use Article of the Maryland Code effective October 1, 2012. *See* 2012 Md. Laws Chapter 426, p. 734. No party pointed out to the Board any substantive difference between the applicable provisions of former Article 66B and the applicable provisions of the present Land Use Article, and, in any event, the 2002 DRRA does not “freeze” State law. Therefore, in discussing the Board’s authority to hear the present appeal, the Board will cite to the current Land Use Article.

### **B. The Former Code and the current Land Use Article of the Maryland Code establish the Board’s jurisdiction to hear the appeal.**

The Opponents appeal a decision of the Planning Commission involving final subdivision and site plan applications. Title 18, Subtitle 1 of the Former Code contains regulations applicable

to subdivision and site plan applications, as well as to the Board's jurisdiction to hear appeals. The County enacted Title 18, Subtitle 1 under the authority granted by what is presently codified as Division 1 of the Land Use Article of the Maryland Code. *See generally* Md. Code, *Land Use* §§ 4-102, 4-201, 4-202 (authorizing local jurisdictions to adopt zoning regulations); § 5-102 (authorizing local jurisdictions to adopt subdivision regulations).

Both the Former Code and the Maryland Code confer upon the Board jurisdiction to hear appeals of Planning Commission decisions involving Title 18, Subtitle 1 matters. *See* Former Code § 18-1-175(a)(1)(i) (the Board has the “power to hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of [the Land Use Article] of the Annotated Code of Maryland or this subtitle”)<sup>4</sup> (cleaned up); *see also* Md. Code, *Land Use* § 4-305(1) (the Board has the power to “hear and decide appeals when it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer or unit under this division or of any local law adopted under this division.”)<sup>5</sup> The Planning Commission is an administrative official or officer under the Former Code, as well as under the current Maryland Code. *See, e.g., Board of County Comm'rs for St. Mary's County v. Southern Resources Management, Inc.*, 154 Md. App. 10, 837 A.2d 1059, 1071 (2003) (a planning commission is an administrative officer under Land Use Article § 4-305 and a board of appeals has authority to hear an appeal of a planning commission decision); *Wharf at Handy's Point, Inc. v. DNR.*, 92 Md. App. 659, 672, 610 A.2d 314, 320 (1992) (the term “an administrative official” includes the Kent County Planning Commission); *cf. Queen Anne's Conservation Ass'n v. County Comm'rs of Queen Anne's County*, 382 Md. 306, 855 A.2d 325, 337 (2004) (when acting as the public principal under a DRRA, the County Commissioners

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<sup>4</sup>The reference to “this subtitle” is to Former Code Title 18, Subtitle 1.

<sup>5</sup>The reference to “this division” is to Division 1 of the Land Use Article.

are an “administrative officer” or “administrative official” under the Maryland and County Codes because the term “administrative official” is most reasonably read as embracing whatever administrative mechanism a local jurisdiction sets up to enforce its planning and zoning laws, including a multi-member body).

Furthermore, in an appeal from a Planning Commission decision, the Board has all the authority of the Commission. *See* Former Code § 18-1-180(a) (“In deciding any appeal from an administrative decision, the Board shall have all powers of the person from whom the appeal is taken and may make such order, requirement, decision, or determination as ought to be made in conformity with [the Land Use Article] of the Annotated Code of Maryland and this Chapter 18-1.”); Md. Code, *Land Use* § 4-306(f)(2) (“The board of appeals shall have all the powers of the administrative officer or unit from whose action the appeal is taken.”).

Accordingly, the Board concludes the Former Code and the Land Use Article of the Maryland Code confer upon the Board jurisdiction to hear the Opponents’ appeal of the Planning Commission’s decision to approve subdivision and site plans for Phase II.

**C. The purposes and objectives of the Former Code and the current Land Use Article of the Maryland Code also establish the Board’s jurisdiction to hear the appeal.**

The Planning Commission has broad authority to administer, construe, and implement the County’s subdivision and site plan regulations, including the purposes underlying the regulations. *See Southern Resources Management*, 154 Md. App. 10, 837 A.2d 1059. *Southern Resources Management* involved an appeal to the St. Mary’s County board of appeals of a decision by the county’s planning commission approving a residential subdivision. In that case, the appellant asked the board to deny the proposed subdivision based on public safety considerations because the involved property was previously used to manufacture and test explosive ordnance and the subdivider could not establish with 100% certainty the land was safe. *Id.*, 837 A.2d at 1062. The board considered the issue and denied the subdivision. *Id.*

The Court of Appeals ended up remanding the case to the board to take additional evidence and more fully explain its decision. *Id.*, 837 A.2d at 1075. But before it remanded the case, the Court addressed the board’s authority to consider the possibility unexploded ordnance remained on the property. Despite the fact county subdivision regulations did not contain a specific standard for use of land with a history of ordnance manufacturing and testing, the Court held the board (acting with the powers of the planning commission) had authority to consider the issue. *Id.*, 837 A.2d at 1076-77. The board’s authority arose from the purposes of the county’s subdivision regulations and from the board’s power to condition subdivision approvals to protect the public health, safety, and welfare. *Id.* The Court held:

The administrative officer, in this case the Planning Commission, was responsible for ensuring that the subdivision requirements were upheld. The St. Mary’s County Subdivision Regulations provide, in part, that “[t]he purpose of the regulations are: (1)[t]o protect and provide for the public health, safety, and General Welfare of the County. . . .” These regulations also state that the Planning Commission may impose such additional reasonable conditions for design, dedication, improvement, and restrictive use of the land as they may see fit to protect the safety, health, and general welfare of the future owners in the subdivision and of the County at large.

Thus, the Board had jurisdiction and authority, under both the Md. Code and the St. Mary’s County Subdivision Regulations, to consider public safety as one factor in its determination whether to approve development of the Property. The circuit court did not err in finding that the Board had authority to consider this point.

*Id.* (cleaned up)

Title 18, Subtitle 1 of the Former Code was adopted to “promote the health, safety and general welfare of the present and future inhabitants of the County.” Former Code § 18-1-006(a)(1). One of the specific purposes the Former Code identifies is securing safety from “flood and other hazards.” *Id.* § 18-1-006(a)(1)(vii). Furthermore, the Former Code directs County officials, among other things, to interpret code provisions to protect “the general public from adverse impacts which might otherwise be the result of a proposed land use.” *Id.* § 18-1-006(b). In this regard, the Former Code prohibits “any interpretation that lowers the protection afforded to the public.” *Id.* § 18-1-006(b)(2).

Regarding subdivision regulations, the Former Code specifically sets forth ten objectives of the regulations, including:

- (5) Providing for drainage through maximum use of natural drainage patterns, whenever practical;
- (6) Providing for a drainage system that is unlikely to develop erosion, washout or flooding problems; [and]
- (7) Providing retention facilities that are least costly to maintain and repair[.]

*Id.* § 18-1-230.

Regarding the Former Code’s site plan regulations, to approve a site plan the Planning Commission must determine, among other things, that the development proposed on a site plan:

- (5) Will not substantially increase stormwater drainage or pollution; [and]
- (6) Will not adversely affect the public welfare[.]

*Id.* § 18-1-221(b).

In addition, the Former Code confers upon the Planning Commission the power to condition its approval of a site plan to “adequately fulfill the requirements for approval.” *Id.* § 18-1-221(d). The Planning Commission must also make a finding that a site plan applicant has completed or guaranteed all resource protection and other facilities and improvements required under Part VI of Subtitle 1. *Id.* § 18-1-222(a)(1). Among other requirements, Part VI addresses development in 100-year floodplains, development in shore buffers, and forest management of shore buffers. *Id.* §§ 18-1-079, 18-1-084 & 18-1-085.

In accordance with the holding in *Southern Resources Management*, the Board finds that (A) the purposes of Title 18, (B) subdivision objectives, (C) site plan approval requirements, and (D) the authority to condition site plans, together confer upon the Board authority to hear the Opponents’ appeal even though the appeal is limited to matters regarding stormwater management, drainage, and pollution. The Board believes its authority to hear the Opponents’ appeal is especially apparent given the provisions of the Former Code that all requirements of Title 18,

Subtitle 1 must “be construed to be *in addition to* all other applicable laws, ordinances, and regulations of . . . Queen Anne’s County.” *Id.* § 18-1-007(a) (italics added).

Therefore, even though Hovnanian has an approved stormwater management plan under Title 14, Subtitle 4 of the Former Code, the requirements of Title 18, Subtitle 1 are *additional* requirements the Planning Commission (and now the Board) must apply. *Id.* Approval of a stormwater management plan does not preclude aggrieved landowners from asserting the plan, as approved, fails to meet subdivision and site plan standards in Title 18, Subtitle 1 of the Former Code—which is what the Opponents are asserting in this appeal.

**D. The appeal procedure in the Former Code’s stormwater management regulations does not divest the Board of its authority to hear the appeal.**

Hovnanian argues the appeal procedure set forth in Title 14, Subtitle 4 of the Former Code precludes the Opponents from raising stormwater management, drainage, and pollution issues in connection with Hovnanian’s subdivision and site plan applications. The Board disagrees for two reasons.

First, the Board disagrees with Hovnanian because the purpose of Title 14, Subtitle 4 of the Former Code is to adopt “*minimum* requirements and procedures to control the adverse impacts associated with increased stormwater runoff.” Former Code § 14-402(a)(1)(i) (italics added). As just pointed out, the requirements of Title 18, Subtitle 1 are to be construed as additional requirements—beyond any minimum requirements established in Title 14, Subtitle 4 or other parts of the Former Code. The additional requirements of Title 18, Subtitle 1 include making sure the proposed subdivision and site plan meet the purposes and objectives of Title 18, Subtitle 1.

Title 14, Subtitle 4 of the Former Code also provides that stormwater management regulations “may not be deemed a limitation or repeal of any other powers granted by State statute.” *Id.* § 14-402(a)(1)(ii). State statute grants the County the power to enact subdivision and site plan regulations, which the County has done.

Moreover, as evidence before the Board establishes, the County evaluated Hovnanian's treatment of stormwater runoff by applying (beyond the minimum requirements of Title 14, Subtitle 4) the requirements the County Code *currently* imposes on development for stormwater management. These *current* County-law requirements impose environmental site design standards ("ESD") to the maximum extent practical ("MEP"). Mr. Trey Porter, of the County's Department of Public Works, testified Hovnanian agreed to meet ESD to the MEP standards. Although the Opponents do not dispute Hovnanian's compliance *vel non* with ESD to the MEP standards, the Board must still evaluate whether such compliance satisfies the *additional* requirements of Title 18, Subtitle 1. Nothing in the Former Code or the current County Code prevents application of such additional requirements to stormwater management.

Second, the Board disagrees with Hovnanian because the Board does not read the appeal provisions in Title 14, Subtitle 4 as applying to a stormwater management plan associated with a final subdivision or site plan. The appeal provisions provide:

A person has the right to appeal to the County Commissioners if the person is aggrieved by the action of any official charged with the enforcement of this subtitle as the result of:

- (1) The disapproval of a properly filed application for a permit;
- (2) issuance of a written notice of violation; or
- (3) an alleged failure to properly enforce this subtitle in regard to a specific allegation.

Former Code § 14-444(a).

An application for subdivision or site plan approval is not an application for a "permit." An application for subdivision or site plan approval does not involve a written notice of violation. An application for subdivision or site plan approval also does not involve a specific allegation of a failure to enforce Title 14, Subtitle 4, because a specific allegation about code enforcement applies to in-the-field enforcement of Subtitle 4's requirements for construction, operation, and maintenance of stormwater management facilities.

The Board construes subsection (3) to apply to construction, operation, and maintenance of stormwater management facilities—things the public can physically see—because such matters are the only matters of which the public would have notice. Subtitle 4 does not require notice of the submission of a stormwater management plan, nor notice of the County’s decision to approve or deny a plan. Without notice, a potentially aggrieved person would likely not know a plan has been submitted and thus could not provide to County reviewers information that might mitigate a potential aggrievement. Without notice, a potentially aggrieved person (except the applicant) would likely not know of the DPW’s decision. The lack of notice to the public, especially to those whom the law would presume prima facie aggrieved, raises questions of due process if the appeal procedures in Former Code § 14-444(a) are exclusive in all matters. The Board believes decisional law requires it to construe the appeal procedures in Former Code § 14-444(a) to avoid such sticky issues of due process.

The Board further believes considerations of due process are especially important where subdivision and site plan regulations separately address stormwater management, which would lead a potentially aggrieved person to believe stormwater management issues can be raised in an appeal of a subdivision or site plan approval. Notably, unlike decisions on stormwater management plans, the Planning Commission’s decisions regarding subdivisions and site plans involve public notice and a public hearing.

For the reasons set forth in Parts IV.B, IV.C, and IV.D of this Opinion, the Board concludes the Opponents’ appeal should not be dismissed. Thus, the Board denies Hovnanian’s motion to dismiss.

#### **E. Sea level rise**

The Board also denies Hovnanian’s motion to exclude possible evidence addressing sea level rise. The Board bases its denial on three reasons. First, the motion is too broad. Second, the

Planning Commission entertained evidence relating to sea level rise, apparently without objection. Third, as Hovnanian's own motion evinces, Hovnanian expected the Opponents would offer evidence pertaining to sea level rise. Accordingly, Hovnanian's due process rights are not infringed by any lack of notice that the Opponents would offer such evidence in this appeal.

Regarding broadness, the Board's rules do not address evidentiary matters except for the authentication of documentary evidence and the exclusion of duplicative evidence. Furthermore, as an administrative agency, the Board generally takes a more relaxed view of admitting evidence than do courts of law. Accordingly, given (A) the purposes and objectives of Title 18, Subtitle 1, (B) the Former Code's admonition that the requirements of Title 18, Subtitle 1 are "in addition to" other code requirements, and (C) the specific requirements for site plan approval that address drainage, the Board cannot say beforehand that all possible evidence regarding sea level rise is inadmissible. Where Hovnanian views specific evidence as speculative, irrelevant, or otherwise objectionable under common law rules of evidence, Hovnanian has the right to object to that specific evidence. But excluding all theoretically possible evidence on the topic is excessive.

Regarding evidence before the Planning Commission, the Commission's minutes show members of the public testified about stormwater management, including the effects of sea level rise. Indeed, the first motion the Planning Commission considered was to table Hovnanian's subdivision and site plan applications so that Hovnanian's consultants could meet with officials in the County's Department of Public Works ("DPW") to consider sea level rise and storm surges. The Planning Commission did not adopt that motion, but the motion the Commission did adopt incorporated a condition requiring Hovnanian to consult with DPW to assess the functionality of Phase II's stormwater management system vis-à-vis anticipated sea level rise and storm surge, and then report back to the Planning Director. The Board concludes, therefore, that as part of their appeal, the Opponents had every reason to expect they could incorporate sea level rise as a factor

in the appeal issues they raise and provide evidence addressing sea level rise. Sea level rise was undeniably an important matter the Planning Commission considered.

#### **V. The Four Seasons Project**

Four Seasons is a 556-acre residential project that, at buildout, will contain 1,079 homes.<sup>6</sup> Some of the homes will be single-family detached dwellings and some will be multifamily condominiums. Four Seasons also will include a community clubhouse, recreational and open space amenities, and an assisted living facility. Hovnanian proposed, and the County has thus far approved, Four Seasons as an active-adult, age-restricted community.

Overall, Four Seasons is proposed to occupy seven parcels of land in the Fourth Election District, near Stevensville. Three parcels are on sectional zoning map 49—parcels 7, 8, and 11. Four parcels are on sectional zoning map 57—parcels 1, 347, 532, and 546. Generally, the boundaries of the Four Seasons project are Cox Creek and Kimberly Way along the west, Main Street (Maryland Route 18) along the south, Macum Creek and the Chester River along the east, and Ackerman Court and Chestnut View Farm Lane along north. Existing development in the vicinity includes the Cloverfields subdivision, the Castle Marina subdivision, Bayside Condominiums, Queen's Landing Condominiums, mixed-use commercial development along Main Street, and the more recently approved planned community of Gibson's Grant across Macum Creek.

At present, Phase I of Four Seasons is under construction. Phase I includes 162 single-family detached homes and multifamily condominiums. Construction of Phase I began after this Board, on appeal from the Planning Commission, approved final subdivision and site plans for Phase 1 on October 21, 2016.

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<sup>6</sup>The approved preliminary subdivision plan for Four Seasons proposed a project with 1,350 homes. After preliminary plan approval, Hovnanian decreased the size of the project.

Phase II of Four Seasons is proposed to include 179 single-family homes, 70 multifamily homes in five condominium buildings, and the community clubhouse and associated recreational amenities. Phase II encompasses 338.851 acres of land on sectional zoning map 49, parcel 7. The portion of Phase II in which most of the single-family homes are proposed is zoned CMPD, Chester Master-Planned Development. The rest of Phase II, including the proposed condominiums and clubhouse, is zoned SMPD, Stevensville Master-Planned Development.

Section 18:1-29.A. of the current County Code describes the purposes of the SMPD district as follows:

(1) This district is intended to provide for master-planned residential or mixed-use development on sites at appropriate locations as identified in the Chester/Stevensville Community Plan. The district provides for a flexible development concept, good site design, architectural integration in the configuration and style of buildings, functional open space and required public facilities as part of a unified and coherent plan of development. Permitted uses generally include a variety of housing types, institutional uses and nonresidential uses that can be compatibly integrated within the development.

(2) The SMPD District is created where public utilities (water and sewer) and infrastructure (roads, walkways, and hike/bike trails) may be extended and interconnected with existing and/or planned public utilities and infrastructure. New development of parcels should be accomplished in a way to integrate approved residential uses with commercial and institutional uses of a size and scale designed to provide needed and appropriate services to the Stevensville community.

Section 18:1-27.A. of the current County Code describes the purposes of the CMPD district in similar fashion:

(1) This district is intended to provide for master-planned residential or mixed-use development on sites at appropriate locations as identified in the Chester/Stevensville Community Plan. The district provides for a flexible development concept, good site design, architectural integration in the configuration and style of buildings, functional open space and required public facilities as part of a unified and coherent plan of development. Permitted uses generally include a variety of housing types, institutional uses and nonresidential uses that can be compatibly integrated within the development.

(2) The CMPD District is created where public utilities (water and sewer) and infrastructure (roads, walkways, and hike/bike trails) may be extended and interconnected with existing and/or planned public utilities and infrastructure. New development of parcels should be accomplished in a way to integrate approved residential uses with commercial and institutional uses of a size and scale designed to

provide needed and appropriate services to the Chester community. Infrastructure improvements relating to roads and trails are important and should follow the recommendations made in the transportation element of the Chester/Stevensville Community Plan.

Almost all of Phase II is in the Chesapeake Bay Critical Area. Land in the critical area is split-classified IDA, Intensely Developed Area and RCA, Resource Conservation Area. The IDA classification allows for most types of development permitted by a property's underlying zoning, but requires developers to reduce pollutant loadings by at least 10%. The RCA classification is the most restrictive critical area classification, allowing residential uses at a density of one dwelling unit per 20 acres.

The County's 2010 Comprehensive Plan includes the land on which Phase II is proposed as part of a Priority Funding Area.<sup>7</sup> The 2010 Plan also places most of the proposed single-family lots in Phase II in the Chester Planned Growth Area, with the condominium and clubhouse portions of Phase II in the Stevensville Planned Growth Area. The 2010 Plan identifies planned growth areas as special planning areas that are centered on land in or close to communities that grew up around historic settlements in the County.

Direct access to Phase II is available from U.S. Route 50/301 and Maryland Route 18 via Castle Marina Road and Four Seasons Boulevard. The planned single-family lots will be accessed via local streets that Hovnanian proposes to construct. The planned condominiums will be accessed off one of the local streets, Harrier Way. Four Seasons Boulevard is proposed to end at a planned local street, Kingfisher Lane. The planned clubhouse and related amenities will gain access from Kingfisher Lane. Phase II will be served by public water and sewer. Phase II also will be served by a private stormwater management system, which is the focus of this appeal.

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<sup>7</sup>Maryland's Smart Growth Area Act of 1997 created the concept of Priority Funding Areas ("PFA"). The 2010 Plan notes that the State uses PFA designations to determine funding availability for infrastructure and other public improvements. Similarly, the County uses PFA designations to plan for water service, wastewater service, and other public facilities and services.

## **VI. Summary of Evidence**

The hearing's first witness was Mr. Trey Porter. Mr. Porter is a civil engineer employed by the County's Department of Public Works. Mr. Porter has worked for DPW for six years, mostly reviewing development plans and working on capital projects. Prior to his job with DPW, Mr. Porter worked as a consultant for eight years. He has a BS degree in environmental science.

Mr. Porter explained the purposes and goals of stormwater management. The main goal is to mimic natural conditions and hydrology. One frequently used model for a pre-development natural state is woodlands in good condition. In addition to slowing down runoff when necessary, stormwater management today focuses on treating contaminants.

Mr. Porter told the Board the Maryland Department of the Environment ("MDE") has primary jurisdiction over stormwater management. MDE will assign its authority under State law to local jurisdictions that have an MDE-approved stormwater management program. Queen Anne's County has an approved program. The program's current regulations are set forth in Chapter 14:1 of the County Code.

Mr. Porter testified the engineering approach to stormwater management underwent major changes beginning in 2007 when the State adopted a new stormwater management law. The 2007 State law established a phase-in of new regulations based on an Environmental Site Design ("ESD") approach. MDE completed a revised stormwater design manual in 2009, after which local jurisdictions began updating their stormwater management regulations.

Prior to the 2007 law, the primary approach to stormwater management was structural in character. Engineers, for example, mostly designed large retention ponds, hydrological devices, and spillways. The emphasis was on the quantity, not quality, of stormwater. Under an ESD approach, runoff quality is of primary importance. Engineers now design micro-treatment of runoff within small drainage areas. The focus is on maintaining pre-development hydrology to

the extent practical. ESD regulations discourage large structures, favoring instead smaller scale features such as rain gardens, grass swales, and submerged gravel wetlands.

Mr. Porter explained that when reviewing proposed stormwater management plans, DPW looks at whether adequate land area has been devoted to managing stormwater, the types of ESD features selected, and whether the selected features are appropriate given relevant site conditions. DPW also reviews an applicant's ESD calculations to make sure the selected ESD features can treat the required volume of runoff. The required treatment volume varies by the percentage of impervious cover proposed. Typically, new development in the County must treat the first inch of rainfall.

Mr. Porter noted most ESD features still have a water quantity component, but retention of stormwater above the first inch of rainfall is not a principal ESD purpose. ESD seeks to treat stormwater via methods such as infiltration, vegetation uptake, and the effects of natural bacteria. Under ESD requirements, treatment of the first one inch of rainfall is mandated. Treatment of quantities over one inch is usually required to the maximum extent practical.

According to Mr. Porter, in addition to ESD standards, County regulations provide DPW with discretion to approve the use of larger scale retention ponds to capture (and partially treat) runoff above the first inch of rainfall. But DPW does not usually see a need for such a practice because of the County's relatively flat topography and the relatively low percentage of impervious cover involved in most development in the County. Some exceptions might be an industrial use that could generate a higher-than-usual risk of pollution or uses that need a large amount of impervious surface for parking and buildings, including shopping centers, schools, and certain institutional uses.

Mr. Porter testified DPW reviewed the Four Seasons Phase II stormwater management plan for compliance with ESD to the Maximum Extent Practical ("MEP") because Hovnanian agreed

to meet current County regulations. At the end of its review, DPW concluded the proposed Phase II stormwater management plan meets current requirements, including ESD standards. Thus, DPW approved the plan.

In response to questions from the Board, Mr. Porter testified DPW also reviewed the Phase II plan for adequacy of its non-ESD aspects, including inlet sizes, pipe sizes, and over-bank protections. This review included a quantitative analysis for a 10-year storm, as well as looking at the system's ability to convey a 100-year storm. Mr. Porter testified retention of stormwater for quantity purposes is not a major issue because the Four Seasons project is located next to tidal waters and the stormwater system will directly discharge into those tidal waters. Mr. Porter told the Board the County requires this type of review in addition to review of ESD standards. In conclusion, Mr. Porter indicated he personally (and professionally) agreed with DPW's decision that Hovnanian's stormwater management plan satisfies the County's current stormwater management regulations, including ESD to the MEP standards.

As Mr. Porter finished his testimony, discussions ensued among counsel for the parties. Mr. Drummond told the Board County regulations do not address sea level rise. In addition, Mr. Drummond said the County has no official sea level rise policy. Mr. Stevens asked the Opponents to stipulate that Hovnanian's stormwater management plan meets ESD standards. Mr. Hammock declined to so stipulate, but he told the Board compliance with ESD standards is not an issue the Opponents are appealing. Rather, the Opponents are asserting that Phase II will have adverse effects on the public health, safety, and welfare because of stormwater runoff and pollutants in stormwater leaving the project.

The next witness, called by counsel for Hovnanian, was Mr. Timothy W. Glass. Mr. Glass is the civil engineer of record for Phase II. He is a partner in and Senior Vice President of Lane Engineering, LLC. Lane Engineering is a civil engineering, surveying, and land planning firm

with offices in Centreville and two other locations on the Eastern Shore. Mr. Glass has been a licensed civil engineer in Maryland for 22 years. He is also licensed in Delaware. Mr. Glass testified he has designed dozens of ESD stormwater management plans. For some plans he has overseen plan implementation, from beginning through completion of construction.

At the start of his testimony, Mr. Glass walked the Board through a set of slides that summarize relevant site conditions and the Phase II stormwater management plan. As he testified, the slides were projected onto a large screen visible to persons attending the public hearing.

Mr. Glass testified the Phase II stormwater management system consists of 12 submerged gravel wetlands, 12 bioretention facilities, and 5,825 linear feet of bioswales. The bioretention facilities cumulatively occupy about 23,100 square feet of land. The submerged gravel wetlands cumulatively occupy about 5.07 acres of land. Overall, the stormwater system exceeds County standards, including ESD standards. Regarding treatment volume, the system exceeds the required treatment volume by 11,049 cubic feet, as the following table summarizes.

Drainage Area to	DA size	ESDv Required	ESDv Provided				Total	
			Rooftop Disconnects	Submerged Gravel Wetland Conversion	Bio Swales	Micro Bio-Retention		
	(ac)	(cf)	(cf)	(cf)	(cf)	(cf)	(cf)	
SGW 1-1	12.0	36,099	4,514	21,444	5,720	0	31,678	
SGW 2	22.9	63,326	7,836	37,398	7,304	6,253	58,791	
SGW 4	23.5	65,166	8,560	36,771	2,200	8,635	56,166	
SGW 6	6.6	18,258	3,616	15,883	880	2,116	22,495	
SGW 6a	10.7	29,254	0	30,478	3,168	0	33,646	
SGW 7	13.9	37,954	3,762	43,976	2,376	0	50,114	
SGW 10-1	3.2	9,219	675	13,829	0	0	14,504	
SGW 10-2	7.1	18,536	1,738	16,953	2,310	0	21,001	
SGW 10-3	4.1	13,015	1,189	6,939	0	0	8,128	
SGW 13-1	8.9	27,947	2,039	17,283	1,672	4,550	25,544	
SGW 13-2	7.7	22,912	0	24,854	0	4,067	28,921	
SGW 14 & DA 15	1.3	4,834	0	7,250	0	0	7,250	
MBR 12	1.0	5,300	0	0	0	4,631	4,631	
<b>Totals</b>	<b>122.9</b>	<b>351,820</b>	<b>33,929</b>	<b>273,058</b>	<b>25,630</b>	<b>30,252</b>	<b>362,869</b>	
							<b>Additional Volume Provided, cubic feet</b>	<b>11,049</b>
							<b>Additional Volume Provided, gallons</b>	<b>82,647</b>

Regarding phosphorus removal, the system exceeds removal requirements by 161%, as the following table summarizes. Mr. Glass testified phosphorus is considered a keystone pollutant that indicates how well the system also removes other pollutants.

<b>Drainage Area No.</b>	<b>P Removal Req'd (lbs)</b>	<b>P Removal Provided (lbs)</b>	<b>Difference (lbs)</b>
<b>Pond 1 Cell 1</b>	<b>8.12</b>	<b>12.54</b>	<b>4.42</b>
<b>Pond 2</b>	<b>13.43</b>	<b>23.96</b>	<b>10.53</b>
<b>Pond 4</b>	<b>13.85</b>	<b>21.16</b>	<b>7.31</b>
<b>Pond 6</b>	<b>3.87</b>	<b>7.05</b>	<b>3.18</b>
<b>Pond 6a</b>	<b>6.14</b>	<b>10.49</b>	<b>4.35</b>
<b>Pond 7</b>	<b>7.96</b>	<b>13.42</b>	<b>5.46</b>
<b>Clubhouse</b>	<b>11.3</b>	<b>16.78</b>	<b>5.48</b>
<b>Pond 13 Cell 1</b>	<b>6.47</b>	<b>9.95</b>	<b>3.48</b>
<b>Pond 13 Cell 2</b>	<b>5.12</b>	<b>7.41</b>	<b>2.29</b>
<b>Totals</b>	<b>76.26</b>	<b>122.76</b>	<b>46.5</b>
<b>161 % of requirement</b>			

Mr. Glass described a submerged gravel wetland as giant stormwater filter. Stormwater percolates through the gravel bottom of the wetland, which removes pollutants. Wetland plants also help remove excess nutrients and other pollutants. Bioretention features are micro-treatment facilities, often connected to submerged gravel wetlands via bioswales. A bioswale is an earthen ditch lined with grass and other bio-media.

The Phase II stormwater system includes several outfalls that transport stormwater from the submerged gravel wetlands to tidal waters. Outfalls use wide, low-velocity channels that are sodded and almost flat. Each outfall includes a level-spreader, which further reduces the velocity of stormwater leaving the outfall and results in a slow sheet-flow from the channels to tidal waters.

Mr. Glass also described the proposed sediment controls that will be in place during construction of Phase II. Sediment controls will include a double row of super silt fence, as well as mulch logs situated in channels to slow stormwater velocity. Stormwater runoff will be directed to oversized retention basins. Hovnanian will discharge water from the basins using a filtering

process known as “Rain for Rent.” This filtration system is already in place. Thus far, the system has filtered 95,600,000 gallons of water before discharge, at an operational cost of more than \$2.2 million. Mr. Glass pointed to the following chart on one of the slides, which shows Hovnanian is storing almost 300% more runoff than required for sediment control purposes.

<b>Sediment Control Facility</b>	<b>Storage Required (CF)</b>	<b>Storage Provided (CF)</b>	<b>Additional Storage Volume Provided Over Required (CF)</b>
Basin 2	40,140	97,866	57,726
Basin 4	42,300	96,931	54,631
Basin 6a	19,260	63,345	44,085
Basin 6	11,880	44,996	33,116
Basin 7	25,020	95,547	70,527
Trap 10-1	10,980	45,059	34,079
Trap 10-2	12,780	21,521	8,741
Trap 10-3	7,380	8,813	1,433
Trap 14	2,340	21,163	18,823
Basin 13-1	13,680	36,784	23,104
Basin 13-2	10,440	53,099	42,659
<b>Totals</b>	<b>196,200</b>	<b>585,124</b>	<b>388,924</b>
<b>Additional volume provided, gallons</b>			<b>2,909,152</b>
<b>Additional volume provided, %</b>			<b>298%</b>

Mr. Glass opined that stormwater leaving Phase II will have no adverse impact on public health, safety, and welfare. Post-construction, there will be no increase in stormwater volume and no increase in pollutants. During construction, because of their design, sediment control facilities will be unlikely to washout or otherwise fail.

Mr. Glass told the Board the design of the Phase II stormwater management system makes use of the land’s natural drainage patterns. Designers examined topographic and environmental features to “fingerprint” the land and to determine the ESD features to use. Mr. Glass noted ESD to the MEP is a costly undertaking, particularly compared to the former methods of stormwater management. Nevertheless, the Phase II stormwater system is not designed to keep construction costs down. The system is designed to meet ESP to the MEP standards, as well as to facilitate future maintenance in accordance with ESD requirements.

Turning to sea level rise (“SLR”), Mr. Glass testified Hovnanian has analyzed the impact of SLR on the Phase II stormwater system using projections included in a 2016 study the County commissioned. The County study is titled Sea Level Rise and Coastal Vulnerability Assessment and Implementation Plan (“SLR Plan”). The SLR Plan postulates three possible scenarios: (1) a two-foot SLR by the year 2050; (2) a four-foot SLR by the year 2100; and (3) a 7.54-foot storm surge elevation in 2050, given the projected two-foot SLR by that year. These estimates are County-wide averages, which the study does not break down by river or shoreline.

Mr. Glass testified Hovnanian evaluated SLR in response to the Planning Commission’s condition requiring Hovnanian to consult with DPW to assess possible SLR effects on the Phase II stormwater management system. Mr. Glass noted he has designed many stormwater management systems in Queen Anne’s County and has never been asked to assess SLR. There are no standards in the County Code for such an assessment and he has never seen such standards in the codes of other jurisdictions. Furthermore, there are no generally accepted baseline data to which to design a stormwater management system to account for possible SLR.

Mr. Glass testified Hovnanian prepared a topographic overlay to assess the Phase II system under all three scenarios in the SLR Plan. Regarding the projected two-foot SLR by 2050, Mr. Glass testified no portion of Phase II proposed for development is lower than two feet above the present elevation of mean-high water, which is 0.94 feet. Thus, if there will be two feet of SLR in 2050, such a condition will have no impact on Phase II, including no impact on the proposed stormwater management system.

Under the SLR Plan’s second scenario, SLR in 2100 could be as much as four feet. If that scenario happens, Mr. Glass testified there will be no significant impact on the lots, roads, and stormwater management system in Phase II. He noted there would be a minor impact to one of Four Seasons’ existing stormwater ponds, but that pond is not in Phase II.

The SLR Plan's third scenario combines the projected two-foot SLR in 2050 with a possible 4.6-foot storm surge. This combination results in a temporary storm surge elevation of 7.54 feet during a major storm event. Mr. Glass noted the major storm event used in a study is a storm that has a 1% chance of occurring during any given year. He also noted there is no accepted scientific consensus about specific elevations of SLR. Hovnanian just used the projected figures in the SLR Plan. Under this 2050 storm-surge scenario, Mr. Glass testified such a surge would affect eight of the 12 submerged gravel wetlands. But the effects would be temporary because any tidal water that enters the wetlands would flow back out as the storm surge abated.

Mr. Glass described the effect of a 7.64-foot storm surge as a "flush" of the wetlands. Depending on duration and the salt content of tidal water entering the submerged gravel wetlands, flushing may not have any impact on the wetlands. If there are impacts, such as harm to wetland vegetation, the impacts could be repaired after the storm. According to Mr. Glass, the Four Seasons HOA will have responsibility for maintaining the stormwater management system. The County will have a right to inspect the system and issue correction orders if the system is not functioning as designed. Even severe damage to wetland vegetation can be remedied by replacing the upper eight-inch soil layer and planting new wetland vegetation (see Opposition Exhibit 5). If the HOA does not correct the damage, the County can do so and assess the costs to the HOA (see Hovnanian Exhibit 4, page 42).

Mr. Glass said he regards the scenarios in the County's SLR Plan as "speculative at best." Even so, under the SLR Plan's scenarios the Phase II stormwater management system will not increase the flow of stormwater from Phase II and will not increase pollutants entering tidal waters. All features of the system that direct flow to outfalls will remain functioning. Any SLR will not hinder release of stormwater, and thus the system will not cause flooding beyond any flooding associated with the storm surge itself. In addition, Mr. Glass testified SLR and storm surges will

not erode the stormwater system. For these reasons, Mr. Glass believes the stormwater system will not have a negative impact on the public welfare even if the SLR Plan's scenarios are accurate. The system's ESD features will still operate as designed with a four-foot SLR.

On cross-examination, Mr. Glass explained that a "tailwater" analysis involves evaluating the volume of water a pipe or channel can convey given the elevation of an outfall. Hovnanian did not undertake a tailwater analysis with SLR in mind because the postulated 2050 and 2100 SLRs result in elevations below the outfalls, and thus SLR would not change an analysis based on existing conditions. Regarding the storm surge scenario, any effect would be temporary. Mr. Glass also explained that when the letter introduced as Opposition Exhibit 5 says a storm-surge impact on functionality may or may not result, the context is that the system is simply not intended to function during a 1% storm in terms of quantity. The system would, however, still function in terms of stormwater quality, which ESD standards emphasize.

Mr. Glass indicated he did not know the storm surge elevation associated with Hurricane Isabel and thus could not agree or disagree with counsel's statement that the storm surge was eight feet. Mr. Glass again acknowledged the projected 2050 storm surge elevation means eight of 12 submerged gravel wetlands will be affected, but he noted this is a 1% chance. Under the 2050 and 2100 SLR projections, without storm surge none of the submerged gravel wetlands will be affected. Mr. Glass also acknowledged he could not say with certainty if or how a storm surge might affect the system's submerged gravel wetlands or outfalls, because there are no consensus standards concerning possible effects and no consensus projections on SLR.

On redirect, Mr. Glass emphasized a process is in place for maintenance of the stormwater system and repairs to the system if a storm surge, or anything else, damages the system.

After Mr. Glass concluded his testimony, the Opponents called Mr. Lee Edgar as a witness. Mr. Edgar is DPW's Chief of Engineering. Mr. Edgar agreed the requirements in the County's

stormwater management code are minimum requirements. If factors such as topography or hydrologic conditions warrant, the County could impose more stringent requirements. But in the case of Phase II, the County did not consider more stringent requirements because the stormwater management system involves direct discharge into tidal waters. With direct discharge into tidal waters there are no concerns about downstream erosion or flooding.

Addressing a 2018 study titled Multi-Jurisdictional Hazard Mitigation Plan (“HMP”), Mr. Edgar explained the HMP involved multiple stakeholders that included County agencies and town governments. Mr. Edgar indicated the County and others prepared the HMP to comply with federal law so the County would qualify for FEMA grants to fund public infrastructure projects. Because DPW did not prepare the HMP, Mr. Edgar said he is not too familiar with the document. But he knows the HMP does contain a chapter on SLR that addresses the three SLR scenarios set forth in the 2016 SLR Plan.

Nevertheless, Mr. Edgar noted that despite what the HMP may say, the County has no regulations for SLR and thus DPW has no basis to require an applicant to address SLR. DPW, however, did rely on the HMP in asking Hovnanian to overlay the Phase II stormwater management plan with the scenarios in the SLR Plan. Mr. Edgar believes the SLP Plan was spurred by the extension of public sewer along Route 8 and a related State requirement. No County law required preparation of the SLR Plan.

Mr. Edgar testified the County continues to study SLR, focusing on possible impacts to County infrastructure. There is presently a “Resilience Committee” that looks for opportunities to decrease risks associated with potential SLR. The committee consists of representatives from County agencies and some other members. The committee uses the SLR Plan and the HMP as references, but not as benchmarks. Regarding the Phase II stormwater management plan and potential SLR, Mr. Edgar testified he is tentatively satisfied with the plan.

The Opponents' next witness was Mr. Art Wawiernia. Mr. Wawiernia is a water resources engineer with 21 years of experience. For the last nine years, Mr. Wawiernia has been employed by AKRF, Inc., an engineering, environmental services, and planning firm with offices throughout the northeastern United States, including Hanover, Maryland. Mr. Wawiernia earned an MS degree from Villanova. He is licensed in Maryland, four other states, and the District of Columbia. Mr. Wawiernia testified he is familiar with MDE's stormwater management regulations and he has reviewed the regulations in Chapter 18, Subtitle 4 of the County's Former Code. Mr. Wawiernia has designed, reviewed, and evaluated over 100 stormwater management plans. He presently is working on four plans for projects in Anne Arundel County, Maryland.

Mr. Wawiernia explained he frequently reviews state and local stormwater management regulations. In Maryland, regulations are primarily State-derived. He also explained that in his profession it is common to predict the effects of future storms based on data from the past. For example, the effects of a 100-year (or 1%) storm is based on previously collected data and statistical analysis. Mr. Wawiernia said he reviewed the County's HMP and found the report uses the same logic in projecting future conditions.

Mr. Wawiernia testified he undertook two studies of the Phase II stormwater management system. One study was an overlay mapping study and the other was a tailwater analysis of the features that constitute submerged gravel wetland #13 (as numbered on Hovnanian's stormwater management plan). The study of submerged gravel wetland #13 included computer modeling. Mr. Wawiernia said the results he obtained replicate the results of Hovnanian's engineer for pre-SLR conditions. But, in Mr. Wawiernia's opinion, post-SLR the Phase II stormwater management system will not function as State and County standards intend.

Mr. Wawiernia summarized his tailwater analysis of submerged gravel wetland #13. His analysis involved examining the wetland's performance under the three SLR scenarios using fixed

elevations shown on Hovnanian's stormwater management plan. The wetland fails under scenario three, which involves adding a projected storm surge to the projected SLR in 2050. Under scenario three, the tidal surge will push water back up the outfall features and flood the wetland. At that point, tidal water will adversely affect the wetland's functionality. Also, the wetland will not be able to receive, treat, and appropriately discharge runoff from the impervious surfaces in the community. The result will be an increase in the discharge of pollutants downstream.

Mr. Wawiernia testified his overlay study shows a two-foot SLR will overtop some of the level spreaders, rendering them inoperable and subject to damage. An inoperable level spreader increases the risk of erosion, which in turn increases the risk of sediment and pollutants entering tidal waters—potentially in substantial amounts. According to Mr. Wawiernia, a four-foot SLR will inundate several level spreaders, outfalls, and channels. In such an event, the potential becomes even greater for erosion and pollutant discharge. In Mr. Wawiernia's opinion, the potential—and in some cases likely—failure of these stormwater management features represents a threat to the public health, safety, and welfare.

Mr. Wawiernia testified he also reviewed Lane Engineering's letter report (Opposition Exhibit 5). He disagrees with the letter's conclusion regarding damage under scenario three conditions. Mr. Wawiernia testified the system's functionality is less about wetlands vegetation and more about the volume of stormwater retained, treated, and properly released. Scenario three conditions will flood eight of the submerged gravel wetlands and their related features, which means the flooded wetlands will not be able to retain stormwater runoff and treat it as intended. Moreover, under scenario three, weirs would essentially be at a zero elevation. Thus, even a mean-high tide would overtop the weirs and flood the eight wetlands basins.

On cross-examination, Mr. Wawiernia acknowledged he has never designed a stormwater management system for land abutting tidal waters. Tidal influences, however, can be added to the

computer model he uses for analysis. Mr. Wawiernia testified that when he designs a stormwater management system, he follows the regulations of the jurisdiction in question. But he might also look at additional information that could affect the system's design, even if the information goes beyond local requirements or his client's directions. It is possible he would design a system that considers SLR projections, depending on his client's goals and objectives.

Mr. Wawiernia also acknowledged he does not know if the SLR and storm surge projections in the HMP are accurate. He agreed impacts associated with scenario three would be temporary impacts occurring during a storm surge. He agreed, too, submerged gravel wetlands can be repaired if damaged. He is not familiar with the covenants requiring the Four Seasons HOA to maintain and repair Phase II's stormwater management system.

On redirect, Mr. Wawiernia explained that erosion results from sheer-stress on the soil. Sheer-stress is primarily a function of velocity, water depth, and slope. For example, when slopes are steeper, sheer-stress is greater. This is so whether analyzing tidal or nontidal water flow. Sheer-stress is part of the physics of moving water and is the same everywhere.

Mr. Wawiernia emphasized that all data he relied on comes from Hovnanian's plans and studies. That data is baked into the modeling he undertook. Mr. Wawiernia testified he would be able to design a stormwater management system that considers SLR if a jurisdiction's regulations were to require such a design, even though engineering for SLR involves cutting edge knowledge and science that engineers and other professionals are just beginning to address.

After Mr. Wawiernia completed his testimony, counsel for Hovnanian recalled Mr. Timothy Glass on rebuttal. Mr. Glass again testified that scenarios one and two postulated in the SLR Plan will not significantly impact the Phase II stormwater management system. The storm surge on which scenario three is based would impact eight of the 12 submerged gravel wetlands. But any impact would be temporary and any damage to the system can be repaired. Moreover, in

Mr. Glass' opinion, the potential that a scenario three storm surge would reduce the functionality of affected submerged gravel wetlands is a moot consideration because the stormwater management system would not be able to capture and treat all the rainfall associated with a 1% storm—tidal surge or not.

Regarding possible erosion during a storm surge, Mr. Glass testified there would be no significant erosion because the vegetated channels between the submerged gravel wetlands and the outfalls are flat enough to be nonerosive. The level spreaders at the end of the channels disperse and slow runoff even further. But if a high tide or storm surge were to top a level spreader, there would be less need to disperse and slow runoff because the channel distance would be shortened and stormwater would flow directly into the overlapping tidal water. A shorter channel translates into lower runoff velocity. In any event, according to Mr. Glass, the channel slopes are nonerosive and will remain nonerosive even if tidal water overtops the level spreaders.

Mr. Glass opined that the SLR scenarios studied will not cause a substantial increase in pollution. The stormwater management system would operate effectively under scenarios one and two. Under scenario three, the system's functionality might be temporarily affected by a storm surge, but the system can be repaired (if needed) and during the actual surge itself runoff would not be leaving the system anyway.

The final witness before the Board, Mr. Steve Layden, appeared on his own behalf. Mr. Layden is a civil engineer with McCrone, Inc., an engineering, surveying, and land planning firm with offices in Centreville and other Maryland locations. Mr. Layden testified he has a long history with the Four Seasons project and was the engineer of record for Four Seasons Phase I.

Mr. Layden noted that under all three SLR scenarios in the SLR Plan, most of the stormwater system's ESD features will function as intended, including bioretention features and bioswales. In his opinion, the system will function with 99.9% effectiveness even under scenario

three and the potential for reduced functionality of the other 0.1% will be temporary. Mr. Layden also opined that the ability to repair any damage to the system is an important consideration.

Regarding flooding, Mr. Layden testified a difference exists between tidal flooding and nontidal flooding. A tidal flood, for example, backs up water—pollutants and all—such that there is no discharge from an affected stormwater system during a surge. Furthermore, in Mr. Layden’s experience, tidal flood waters will already be contaminated with far more pollutants than might escape a stormwater system as a storm surge recedes.

## **VII. Findings and Conclusions**

Based on the evidence the Board received, particularly the testimony of Mr. Porter, the testimony of Mr. Glass, and the exhibits Mr. Glass explained, the Board finds Hovnanian has met its burden of proof regarding the subdivision and site plan standards the Board must consider given the issues on appeal.

### **A. Compliance with applicable law**

The first conclusion the Board reaches is that the stormwater management plan Hovnanian proposes for Four Seasons Phase II and the stormwater management system the plan depicts satisfy the requirements of Title 14, Subtitle 4 of the Former Code and Chapter 14:4 of the current County Code, including the current Code’s ESD requirements.

The Board finds it important to state the foregoing conclusion for two reasons.

First, the Board assumes (without deciding) the Phase II stormwater management plan itself is on appeal to the Board because the plan is part of Hovnanian’s final subdivision and site plan applications and no other method exists in the Code to appeal the plan. As discussed in Part IV.D. of this Opinion, the Board does not read the Former Code to require an appeal of DPW’s decision to approve a stormwater plan to be filed with the County Commissioners. Regarding the current County Code, an applicant must directly appeal to this Board DPW’s decision to *deny* a

stormwater management plan. But there is no provision for a direct appeal to this Board (or to any other entity) by an aggrieved party when DPW *approves* a stormwater management plan. *See* County Code § 14:4-42. Because an approved stormwater management plan is always associated with subdivision, site plan, or permit plans, the Board assumes (again without deciding) an appeal of such plans may incorporate an appeal of the associated stormwater management plan.

Second, the Board states its initial conclusion because a stormwater management plan's compliance with applicable code provisions is evidence (but not necessarily conclusive) the approved stormwater management system satisfies one or more applicable subdivision and site plan standards. Thus, regardless of whether the Phase II stormwater management plan is itself on appeal to this Board, evaluating whether the plan complies with Title 14, Subtitle 4 of the Former Code and Chapter 14:4 of the current County Code is important.

Regarding the plan's compliance with Title 14, Subtitle 4 of the Former Code and Chapter 14:4 of the current County Code, Mr. Porter and Mr. Glass testified to this effect and there is no evidence or expert opinion to the contrary. Furthermore, SLR aside, Counsel for the Opponents indicated compliance with ESD requirements is not an issue the Opponents are appealing.

Mr. Wawiernia opined portions of the Phase II stormwater management system would fail to meet ESD standards under the SLR Plan's scenario three, which combines predicted SLR in 2050 with a predicted storm surge. But insofar as Code standards, the short answer to Mr. Wawiernia's opinion is that neither Title 14, Subtitle 4 of the Former Code nor Chapter 14:4 of the current County Code requires a stormwater management system to be designed to function under the SLR Plan's scenario three—or any—projected SLR. The Former Code and the current County Code have no standards at all addressing SLR.

The Board's conclusion the Phase II stormwater management plan satisfies requirements of Title 14, Subtitle 4 of the Former Code and Chapter 14:4 of the current County Code does not

end the analysis, however. The Board must still evaluate Phase II's proposed stormwater system under applicable subdivision and site plan provisions in the Former Code, including whether the plans are consistent with the provisions' objectives and the fundamental purpose of the regulations to protect the public health, safety, and welfare. Although not true in this case, it is possible that implementation of a stormwater management plan that satisfies the minimum standards of Title 14, Subtitle 4 of the Former Code, or Chapter 14:4 of the current County Code, or both, might still be detrimental to the public health, safety, and welfare.

Concerning subdivision regulations, the Former Code sets forth ten objectives, including:

- (5) Providing for drainage through maximum use of natural drainage patterns, whenever practical;
- (6) Providing for a drainage system that is unlikely to develop erosion, washout or flooding problems; [and]
- (7) Providing retention facilities that are least costly to maintain and repair[.]

Former Code § 18-1-230.

The Board finds the proposed Phase II stormwater system, and thus the proposed subdivision, maximizes use of natural drainage patterns. The Board accepts Mr. Glass' testimony in this regard.

Setting aside sea level rise, which the Board will address later, the Board finds the proposed Phase II stormwater system is unlikely to develop erosion, washout, or flooding problems. Mr. Glass testified the system's features will capture and treat the first one inch of rainwater. He also testified the system will adequately convey rainfall associated with a 10-year storm. In addition, Mr. Glass testified, and the approved plan shows, the channels leading to the system's outfalls are gently sloped and nonerosive. Moreover, the Phase II system will discharge into tidal waters, which makes potential "downstream" flooding a nonissue. Runoff flowing into tidal waters cannot "flood" tidal waters. Accordingly, the system's professionally designed (and County reviewed) ESD and conveyance features are unlikely to develop erosion, washout, or flooding.

The evidence also establishes that at the present elevation of mean high tide, tidal waters will not erode, washout, or flood components of the proposed stormwater management system. Mr. Glass testified no portion of Phase II proposed for development is below 2.94 feet in elevation. The HMP (Opposition Exhibit 6) and Lane Engineering's letter (Opposition Exhibit 5) indicate mean high tide presently reaches 0.94 feet in elevation, which is at least two feet below the elevation of Phase II's proposed stormwater management features.

During the hearing, counsel for the Opponents suggested Hurricane Isabel produced an eight-foot tidal surge, which would certainly flood at least some components of the proposed stormwater management system. Counsel's suggestion of course is not evidence. Also, in other cases the Board has received evidence that Isabel's tidal surge reached different elevations along different parts of the County's shoreline. In any event, it is beyond the regulations in, and the objectives and purposes of, the Former Code (including the Code's floodplain management regulations) to locate a stormwater management system with an elevation high enough to avoid a tidal surge associated with a hurricane. In any event, as Mr. Glass testified, Phase II's stormwater management system is resistant to erosion and other potential tidal flood damage.

The Board finds the proposed Phase II stormwater management system includes a retention component that is least costly to maintain and repair. Retention of runoff volume per se is not a concern where a stormwater system discharges directly into tidal waters. For this reason, the proposed Phase II system does not include traditional retention facilities. Mr. Glass testified ESD systems have a retention function, but retention is to allow the bio-features to treat at least the first inch of rainfall. The Phase II system can retain and treat 11,049 cubic feet more rainwater than required. The lion's share of retention occurs in the proposed submerged gravel wetlands, which Mr. Glass testified are comparatively easy to maintain and repair if damaged. Typically, repairs involve replacement of soil and planting new vegetation, as opposed to structural repairs.

Concerning the Former Code's site plan regulations, to approve a site plan the Planning Commission must determine development shown on the site plan:

- (5) Will not substantially increase stormwater drainage or pollution[.]

*Id.* § 18-1-221(b).

Sea level rise again aside, the Board finds the proposed Phase II stormwater management system, and the development shown on the site plan, will not substantially increase stormwater drainage or pollution. Unrebutted evidence shows the system will retain more stormwater than required and, using phosphorous as a keystone, will reduce pollutants more than required. In addition, the system's ESD features will allow stormwater to percolate into the ground and be absorbed by vegetation, thus reducing the volume of water that is discharged via outfalls. As Mr. Glass testified, there will be no increase in stormwater volume and pollutants post-construction.

#### **B. Sea Level Rise**

The Opponents challenge the Phase II stormwater management plan on the basis that SLR will cause the system to fail. If the system fails, the Opponents assert the stormwater system will "substantially increase stormwater drainage or pollution," will fail "to meet both State and County requirements for stormwater management," and "will have adverse impacts to the health, safety and welfare of the public and the environment." In addressing SLR, neither Hovnanian nor the Opponents provided independent evidence pertaining to SLR. Instead, both parties analyzed SLR, and potential impacts of SLR on the Phase II stormwater management system, using the three scenarios included in the County's 2016 SLR Plan and 2018 HMP.<sup>8</sup>

At the outset, the Board notes the scenarios in the HMP rely on projections made in 2013 by the Scientific and Technical Working Group ("STWG") of the Maryland Commission on Climate Change. As the HMP notes, STWG projected a range of SLR increases. The two-foot

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<sup>8</sup>The discussion in the following two paragraphs is based on information in Chapter 8 of the HMP.

increase by 2050 the HMP studied is only 0.1-foot less than the 2.1-foot “high” estimate of SLR. (The “low” estimate is 0.9 feet and the “best” estimate is 1.4 feet.) The four-foot increase by 2100 the HMP studied is close to the 3.7-foot “best” estimate. (The “low” estimate is 2.1 feet and the “high” estimate is 5.7 feet.) The HMP does not indicate how STWG developed its estimates.

The HMP’s projected storm surge elevations were taken from FEMA estimates. Again, FEMA estimated a range of possible storm surge elevations, from 3.5 feet to 4.2 feet in ten years and 4.0 feet to 4.9 feet in 50 years. The FEMA elevations are estimates of surge heights above sea level, and they vary from location to location in the County. In other words, some shorelines will endure a higher storm surge than others. For its mapping, the HMP used a County-wide average of four feet and added to that surge elevation the two feet of projected SLR in 2050. Before the Board, both parties assumed the storm surge elevation in the vicinity of Phase II would be 4.6 feet in 2050, which is close to the high end of FEMA’s 50-year projection (for the year 2064). It is not clear how the HMP selected four feet nor how the parties selected 4.6 feet, but the HMP notes that modeling specific impacts of a storm surge is “a complicated and resource-intensive undertaking that was outside the scope” of the HMP.

As the Board previously discussed, the Board denied Hovnanian’s motion to exclude evidence addressing SLR in part to give the Opponents an opportunity to present independent data and expert opinion specifically relevant to the Phase II subdivision and site plans under appeal. But at the end of the day, there is precious little of such evidence. To be sure, the Board heard from Mr. Glass and Mr. Wawiernia about the overlay mapping both undertook, as well as from Mr. Wawiernia about his tailwater analysis of the outfall serving submerged gravel wetland #13. Nevertheless, the mapping and tailwater analysis depend on the accuracy of the SLR and storm surge projections in the HMP, which in turn depend on earlier projections made by STWG and FEMA. Mr. Wawiernia acknowledged, as he had to, that he does not know if the HMP projections

are accurate. Likewise, Mr. Glass indicated he took the HMP projections as a given, but he has no way to know if the projections are accurate. The Board is thus left with a quandary.

The Opponents ask the Board to evaluate the Phase II stormwater management plans under scenarios based on predictions no one can say are accurate. In addition, by targeting SLR, the Opponents, in effect, put Hovnanian in a position of trying to prove a negative—usually an evidentiary impossibility. According to the HMP and the SLR Plan (Opponents’ Exhibits 6 and 7), sea levels have been rising for many years and levels will continue to rise. Globally, oceans are warming and polar ice is melting. In some locations, including Maryland, land is subsiding. But still unknown is how SLR will affect specific properties and shorelines.

Only in the last few years have public officials begun to study, and in some cases plan, for SLR. Only in the last few years, as Mr. Wawiernia noted, have engineers and planners begun to consider SLR in some of their designs and plans. In Queen Anne’s County, the County prepared the 2016 SLR Plan. In the 2018 update of the County’s HMP, the HMP included, for the first time, a chapter on SLR. Also, as Mr. Edgar testified, the County has recently formed a Resilience Committee and, for public infrastructure, begun to look for opportunities to decrease risks associated with potential SLR. The committee uses the HMP and SLR Plan as references, but not as establishing benchmarks. The County has not, however, adopted subdivision, site plan, or zoning regulations to address SLR.

Because of the absence of hard information and specific regulations, the Board can only evaluate whether the SLR evidence before it is sufficient to cause the Board to reach conclusions regarding applicable subdivision and site plan considerations different from the conclusions the Board reached in part VII.A. of this Opinion when not considering SLR. The Board concludes the SLR evidence does not support different conclusions. Concerning the limited scope of the SLR evidence before the Board—the three scenarios in the HMP—the Board concludes Hovnanian has

met its burden to establish the Phase II stormwater management system will satisfy subdivision and site plan standards in spite of the potential impacts of SLR on the system.

Regarding natural drainage patterns, there is no evidence SLR will have any effect on the ability of the stormwater management system to continue to use natural drainage patterns.

Regarding the likelihood of the system developing erosion, washout, or flooding problems, Mr. Wawiernia testified his topographic overlay shows SLR scenario one will overtop some of the system's level spreaders at high tide. Under SLR scenario two, according to Mr. Wawiernia, high tides will reach more level spreaders, as well as several outfalls and channels. Mr. Wawiernia thought affected level spreaders would not function as intended and affected channels would be subject to erosion. Nonfunctioning level spreaders and tidal-flooded channels increase the risk of discharging sediment and other pollutants, he said.

On the other hand, Mr. Glass testified under scenario one none of the system's components will be adversely affected if SLR increases sea level by two feet above today's high-tide elevation of 0.94 feet, because the system's critical components will be situated higher than 2.94 feet. Under scenario two, Mr. Glass likewise testified a four-foot SLR will not adversely affect the stormwater management system serving Phase II. He explained that tidal waters flowing up stormwater channels will not result in erosion because the channels are almost flat and designed to be nonerosive. Similarly, tidal water overtopping a level spreader will not result in erosion or greater pollution because (A) channels leading to the level spreaders are nonerosive, (B) higher tidal water would decrease channel length, and (C) stormwater flowing down a channel would flow into the overlapping tidal water, thus eliminating the need for the overlapped level spreader.

The Board credits Mr. Glass' testimony, including his explanation why possible high-tide effects will not impair the functioning of the stormwater management system. The Board finds that under scenarios one and two, the system is unlikely to develop erosion, washout, or flooding

problems. For the same reasons, the Board also finds that under scenarios one and two the proposed stormwater management system will not substantially increase stormwater drainage or pollution, which is a site plan requirement in § 18-1-221(b)(5) of the Former Code.

Scenario three potentially involves greater impacts to the stormwater management system. Eight of the 12 submerged gravel wetlands could be affected. But the effect would be temporary because any tidal water that enters the wetlands would flow out as the storm surge abates. In essence, as Mr. Glass testified, a 7.64-foot storm surge would “flush” the wetlands. Such flushing may or may not damage the submerged gravel wetlands and related facilities. If there is damage, the system can be repaired. The Board is satisfied repairs are guaranteed by the community’s covenants and the County’s right, at first, to order the HOA to undertake repairs, and, if necessary, to undertake repairs itself and assess the HOA for the cost.

Furthermore, storm-surge damage to the system would be rare. The storm-surge scenario is based on a storm that has only a 1% chance of occurring during any given year. This means in the 30 years between today and 2050, the odds are 7:3 the system will not have experienced such a storm. Even if a 1% storm occurs in the next 30 years, the submerged gravel wetlands will be out of commission during the actual storm surge and, if damaged, after the storm surge only for the length of time needed to make necessary repairs. This means the submerged gravel wetlands will function as intended—without erosion, washout, or flooding—for most of the time in any particular one-year period during which a 1% storm might occur, and will function as intended all the time in other years. In the Board’s view, such functioning satisfies the subdivision objective in § 18-1-230(6) of the Former Code, as well as the standard in § 18-1-221(b)(5) of the Former Code requiring development not to substantially increase stormwater drainage or pollution.

Regarding the objective in § 18-1-230(7) of the Former Code, which encourages retention facilities that are least costly to maintain and repair, the Board concludes the evidence addressing

SLR does not warrant changing the Board's finding that, SLR aside, the Phase II system meets this objective. SLR will not change the cost of maintenance and repair of the retention component of the proposed stormwater management system under any of the three SLR scenarios the parties presented. Scenario three might result in damage to one or more submerged gravel wetlands, but the damage will be to the water quality component of the wetlands, not to the retention component. Even devoid of vegetation, a wetlands basin will still retain water.

### C. Public Health, Safety, and Welfare

Site plan regulations include a specific standard addressing public health, safety, and welfare. The fundamental purpose of subdivision regulations is to help protect public health, safety, and welfare. Therefore, the Board concludes it must address public health, safety, and welfare (the "public welfare") in the context of the Phase II stormwater management system.

The Board has no trouble concluding that, SLR aside, the proposed system will not adversely affect the public welfare. In the absence of any evidence to the contrary, the Board finds DPW's approval of plans for the stormwater management system means the proposed system satisfies the requirements in Title 14, Subtitle 4 of the Former Code and Chapter 14:4 of the current County Code. Compliance with regulations that specifically address stormwater management, even if the regulations establish only minimum standards, is in this case important evidence the approved stormwater management system will protect the public welfare.

Evidence also establishes the proposed stormwater management system will retain a larger volume of rainwater for treatment than required and will remove a greater amount of pollutants than required. Mr. Glass testified that, post-construction, there will be no increase in the amount of stormwater and pollutants leaving Phase II. In addition, the proposed system uses natural drainage patterns and employs a variety of ESD features, including bioretention, bioswales and outfall channels designed to be nonerosive. These factors, too, protect the public welfare.

Considering the matter of SLR in the context of the three HMP scenarios, both Mr. Glass and Mr. Wawiernia rendered expert opinions about the proposed stormwater management system and the public welfare. The Board finds Mr. Glass' opinion to be the sounder of the two. Mr. Glass has prepared and overseen implementation of stormwater management plans for land on the Eastern Shore, including land abutting tidal waters. Mr. Wawiernia has not.

Mr. Wawiernia thought a tailwater analysis to be important. But Mr. Glass explained a tailwater analysis is not important because under scenarios one and two, the outfalls will remain above the projected SLR elevations. And under scenario three, no stormwater at all could leave the system during a tidal surge, which makes a tailwater analysis moot.

Mr. Wawiernia also thought the diminished ability of the proposed stormwater system to retain rainfall during a 1% storm to be important. But Mr. Glass explained that stormwater retention during a storm surge caused by a 1% storm has no greater effect on the stormwater system than the rainfall associated with a 1% storm because the proposed system cannot retain all the rainfall regardless of whether tidal waters inundate the submerged gravel wetlands. Consistent with County regulations, the stormwater management system is not intended to retain all the rainfall from a 1% storm. Moreover, retaining all the rainfall from a 1% storm is not necessary because direct discharge into tidal waters eliminates the potential for downstream flooding of other property: there is no property downstream.

In the Board's view, Mr. Glass' explanation on these two points, as well as others, shows he has a better understanding of stormwater management systems for land abutting tidal waters than does Mr. Wawiernia. Moreover, the testimony of Mr. Layden supported Mr. Glass' understanding of systems that discharge into tidal waters. Mr. Layden also pointed out that a scenario three storm surge would not impact the Phase II stormwater management system's micro-treatment features nor most of the system's over one mile of bioswales.

Beyond the testimony and opinions the Board heard about SLR is the question of the accuracy of the SLR projections in the 2016 SLP Plan and the 2018 HMP. No one could say the projections are accurate. Mr. Edgar testified the County's Resilience Committee does not use the projections as benchmarks in considering how to reduce the risk of SLR effects on public infrastructure. The HMP notes that not all shorelines and riparian properties will be affected equally by a combination of SLR and a rare 1% storm surge.

With all this uncertainty, coupled with the lack of SLR regulations and even SLR policy directives,<sup>9</sup> the Board concludes it would be arbitrary to find the proposed Phase II stormwater management system will endanger the public welfare because of SLR. In addition, given the evidence in this case, the Board concludes Hovnanian has met its burden to prove the proposed Phase II stormwater management system will not adversely affect the public welfare and that approval of the Phase II subdivision and site plans will promote the public welfare for present and future inhabitants of the County.

Barring a miracle, the County one day will have to reckon with SLR. But today, in a quasi-judicial proceeding for one development project, evidence sufficient to support an SLR reckoning for the project in question is lacking.

### **DECISION**

For the reasons set forth in the foregoing Opinion, and exercising on appeal the powers of the Planning Commission, by a vote of three in favor and none opposed the Board denies the Opponents' appeal. In denying the appeal, the Board affirms the Planning Commission's decision to conditionally grant final subdivision and site plan approvals for Phase II of Four Seasons.

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<sup>9</sup>The HMP identifies strategies for dealing with SLR. But these strategies address only public infrastructure. The HMP does not identify strategies for private land development.

**ORDER**

For the reasons set forth in the foregoing Opinion, it is this 8th day of May, 2020, ordered that the appeal filed by the Queen Anne's Conservation Association, Inc., *et al.* on December 13, 2019 in Case No. BOA-19-12-0053 is denied. It is further ordered that the November 14, 2019 decision of the Queen Anne's County Planning Commission to conditionally approve final subdivision and site plans for Four Seasons Phase II is affirmed.



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Howard A. Dean, Vice Chairman and  
Acting Chairman for this Appeal



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Craig W. McGinnes, Member



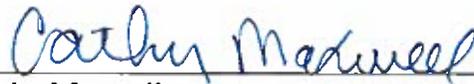
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Michael A. Lesniowski, Alternate Member

State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case Number BOA-19-12-0053, for Queen Anne's Conservation Association, Inc., *et al.*, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on February 26, 2020 and that the minutes and a recording of the February 26, 2020 meeting are filed in the office of Board of Appeals.

Certified this 8th day of May, 2020 by:



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Cathy Maxwell  
Clerk to the Board of Appeals